

COUNCIL POLICY**CURRENT**

SUBJECT: REQUIREMENTS FOR ANNUAL ADJUSTMENT OF FACILITIES
BENEFIT ASSESSMENTS AND PREPAYMENT OF ASSESSMENTS
POLICY NO.: 600-36
EFFECTIVE DATE: March 7, 1995

BACKGROUND:

The Progress Guide and General Plan for The City of San Diego, adopted by the City Council on February, 26, 1979, incorporates "Guidelines for Future Development" which detail the growth management goals and objectives of the City and recommendations for implementation of those objectives. The Growth Management Program is premised upon the division of the City into three major planning areas: urbanized, planned urbanizing and future urbanizing, which are defined in the General Plan text and illustrations with respect to community plan areas. The Guidelines for Future Development require adequate public facilities prior to or concurrent with development in the planned urbanizing area and further require developer financing of the necessary public facilities. The requirement for adequate public facilities has been implemented by Council Policy No. 600-28, "Requirements for Development Approval in Planned Urbanizing Areas" (adopted by City Council on August 11, 1980). The requirement for developer-financing has been implemented by means of Facilities Benefit Assessments ("FBA"). A procedural ordinance for financing of public facilities in planned urbanizing areas (Ordinance No. O-15318 (New Series) adding a new Division 22 to Chapter VI, Article 1, of the San Diego Municipal Code) was adopted by the City Council on August 25, 1980. The FBA procedural ordinance authorizes the City to designate "areas of benefit" in order that the cost of constructing public facilities may be borne by all of the lands benefitted thereby.

Pursuant to the FBA procedural ordinances, the City established areas of benefit for and applied assessments to several communities in the planned urbanizing area, including but not limited to Penasquitos East, North University City and Carmel Valley. The FBA procedural ordinance was challenged and upheld in the companion cases of *J.W. Jones Companies v. City of San Diego*, 157 Cal.App.3d 745, 203 Cal.Rptr. 580 (1984) and *City of San Diego v. Holodnak*, 157 Cal.App.3d 759, 203 Cal.Rptr. 797 (1984).

The FBA procedural ordinance requires the preparation of a capital improvements program and a financing plan, including information concerning the method of apportionment of costs to properties within the defined area of benefit and the basis and methodology by which automatic annual increases in the FBA will be computed, assessed and levied. The FBA shall be recorded in the Office of the County Recorder of San Diego and shall become a lien upon the applicable property. After City Council adoption of a Resolution of Designation, no building permits shall be issued for development on any land within the area of benefit until the FBA has been paid. The FBA shall be paid by the property owner upon the issuance of building permits for development or at such time as the capital improvements program for the applicable area of benefit calls for the construction of public facilities projects. The lien is intended to assure that, in the event development of certain properties within the area of benefit lags behind the schedule for construction of the capital improvements program, that the City can advance the construction of the facilities before building permits are issued and utilize the lien to guarantee payment of the funds necessary to provide the facilities. If development proceeds according to the timing and phasing schedule of the financing plan, FBA would normally be paid at the time of issuance of building permits. Only where there is a discrepancy between the phasing of

buildout and the provision of improvements necessary to adequately service the development would the lien provision be utilized.

The FBA procedural ordinance calls for an annual adjustment in the amount of the FBA to account for increases or decreases in the estimated cost of public facility projects, changes in the scope of projects, addition or subtraction of projects, the availability of matching funds and such other factors as may be appropriate, in order to minimize shortfalls in assessment revenues. Without an annual review and the resultant modification to FBAs, collections pursuant to the FBA program may lead to shortfalls in assessment revenues which will either (1) pressure the City to provide general funds to eliminate the shortfall or (2) pressure the City to allow development to proceed without adequate public facilities. Either result is inconsistent with Council Policy No. 600-28 and the Guidelines for Future Development.

The FBA procedural ordinance does not specifically address the City to accept prepayments of assessments (i.e., payment of assessment and therefore release of the lien substantially in advance of actual development and issuance of building permits).

PURPOSE:

This policy applies to the formally adopted and designated FBA areas. The purpose of this Council Policy is:

1. To establish guidelines for an annual review of FBA and for modifications to liens or the imposition of additional liens by the City based upon the annual review; and
2. To establish guidelines for prepayment of assessments and release of liens.

POLICY:

A. Annual Review

1. Annually, the City Manager shall prepare an Annual Review Report for each FBA area. In the preparation of such report, the City Manager shall review the following information:
 - (a) A statement accounting for assessments collected and disbursed during the preceding year;
 - (b) A statement indicating the amount and type of development for which building permits have been issued in the preceding year; the amount and type of development for which final maps have been approved; the extent of rezoning of property; and any changes in the community plan applicable to the area of benefit; and
 - (c) A statement indicating FBA projects initiated and completed during the preceding year; the status of ongoing projects; the need of changes in the current Capital Improvements Program for the area of benefit; changes in the cost estimates for projects; increases or decreases in the actual costs of completed projects; and such other matters as may be relevant to the annual review.

2. The City Manager's Report shall make recommendations based on the above information, with respect to adjustments to or modifications of the Capital Improvements Program, the projected amount of development, and the projected timing and phasing of development.
3. Such proposed modifications shall be made pursuant to the procedure set forth in Sections 61.2203 through 61.2209 of the San Diego Municipal Code.
4. Based upon the Annual Review Report or at such other times as the City deems proper and pursuant to the requirements set forth in Section 61.2212 of the San Diego Municipal Code, the City Council shall modify the FBAs and thereafter refile liens against benefitted properties in the amount of the revised FBAs and/or file supplemental liens against benefitted properties to the extent of any increase in FBA with respect to such properties.

B. Prepayment of Assessments and Release of Liens

1. Prepayment of assessments and release of liens prior to application for building permits shall be permitted only when necessary for the property owner to effect a sale, transfer or refinancing of property.
2. If prepayment of the assessment and release of the lien occurs prior to issuance of building permits, the property owner shall be required to pay the assessment in effect at the time of prepayment and shall be required to pay a supplemental assessment at the time of subsequent issuance of building permits in an amount equal to the then current assessment less any credits for the amount of prepayment with respect to such property.
3. Regardless of the prepayment of a lien and payment of any supplemental assessments, at the time of application for building permits the then current assessment shall be due.

C. Prepayment of Assessments Without Release of Liens

1. In communities where public facilities or transportation phasing plans limit the issuance of building permits the Building Permit Allocation Policy is on file with the City Clerk.

HISTORY:

Adopted by Resolution R-268360 05/19/1987
Amended by Resolution R-273823 06/20/1989
Amended by Resolution R-277634 04/08/1991
(to add Carmel Valley Allocation Method)
Amended by Resolution R-285452 03/07/1995
(to amend the Carmel Valley Allocation Method)